

UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF VERMONT

VITO J. RUSSO,
Plaintiff,

v.

File No. 1:10-cv-296-jgm

STATE OF VERMONT,
VERMONT ATTORNEY GENERAL,
TRACY SHRIVER, ESQ.,
DAN DAVIS, ESQ.,
JUDGE KAREN CARROLL,
BRATTLEBORO POLICE DEPARTMENT,
WINDHAM COUNTY, TOWN OF
BRATTLEBORO, DEFENDER GENERAL,
PUBLIC DEFENDERS,
Defendants.

ORDER

The Magistrate Judge's Report and Recommendation was filed July 29, 2011.

(Doc. 39.) After de novo review and over objection, the Report and Recommendation is AFFIRMED, APPROVED and ADOPTED. See 28 U.S.C. § 636(b)(1).

Defendants' Motions to Dismiss (Docs. 10, 11, 13 and 15) are GRANTED.

Because Plaintiff's claims are substantively flawed, an amendment of the complaint would be futile. Leave to amend the Complaint, therefore, is DENIED, as is Plaintiff's motion for extension of time (Doc. 38).

The Court notes Plaintiff has named Windham County as a defendant; however no discernible claims against Windham County are alleged in the Complaint. Where a complainant names a defendant in the caption but the complaint contains no substantive allegation against that defendant, dismissal of the complaint is appropriate.

See Garcia v. Watts, No. 08-CV-778, 2009 WL 2777085, at *13 (S.D.N.Y. Sept. 1,

2009) (collecting cases). Accordingly, because Russo's complaint contains no mention of Defendant Windham County other than in the caption, the Court sua sponte dismisses the complaint as against Windham County.

It is further certified that any appeal taken in forma pauperis from this Order would not be taken in good faith because such an appeal would be frivolous. See 28 U.S.C. § 1915(a)(3).

SO ORDERED.

Dated at Brattleboro, in the District of Vermont, this 29th day of September, 2011.

/s/ J. Garvan Murtha

Honorable J. Garvan Murtha
United States District Judge